IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 577 OF 2005

Shri Subhash Damodar Karmase ... Appellant (Ori.Plaintiff)

V/s

Sou. Sandhya Sudhakar Kalekar ... Respondent (Ori.Defendant)

Mr. Avinash H. Fatangare for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 18TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Kalyan dated 8.6.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Kalyan, dated 3.8.1999, dismissing the suit for specific performance of the contract between the parties.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for specific performance of the contract between the parties based on agreement dated 6.6.1977. According to the plaintiff, the defendant was the owner of the suit property who had purchased the property by sale deed dated 11.6.1970 and on 6.6.1977 she executed the agreement to sale of the suit land. The price of the suit land was fixed at Rs.1000/-. She paid the said price to the plaintiff on the same day. Agreement of sale was registered. On that day itself, the defendant put the plaintiff in possession of the suit property. Thereafter, the suit land was converted into non-agricultural and he constructed house thereon with permission from the occupant. However, when the plaintiff called upon the defendant to execute the sale deed on completion of the conditions embodied therein, the defendant refused to comply with the same and hence the suit came to be filed.

The defendant contested the suit on various grounds inter-alia submitting that no possession was handed over by execution of the contract of sale executed between the parties, however, the lease deed was executed between the parties on 6.6.1977 by which virtue the

plaintiff was put in possession. It was also contended that the suit was not within limitation and, as such, it was sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved the execution of the agreement as well as the sale deed but it was not proved that the defendant had put the plaintiff in possession at the foot of the suit agreement. The suit was also found to be time barred and on such grounds, the suit came to be dismissed.

The appeal was carried to the Court of Addl. District & Sessions Judge, Kalyan. The learned Addl. District Judge, after hearing both parties concurred with the findings recorded by the Trial Court and dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that the plaintiff has come with the case that he was put in possession of the suit property by virtue of suit agreement executed between the parties. However, perusal of the document itself reveals that the state of affair is totally different. No doubt the plaintiff was put in possession of the property by virtue of sale deed dated 6.6.1977 by

the defendant, however, that aspect would not be sufficient to protect the plaintiff under the provision of Sec.53-A of the Transfer of Property Act. It is also to be noted that the suit is filed after 18 years of the execution of agreement of sale of the suit property. There is no explanation at all that the filing of the suit was so delayed. It was submitted on behalf of the appellant that the period was lapsed due to requirement of the permission under U.L.C. Act, however, there is no sufficient evidence on record to show that it was the only reason why the suit was inordinately delayed though it is a fact that the entire consideration of Rs.1000/- had already passed between the parties. Needless to mention that the relief of specific performance is the discretionary relief and both the Courts below have concurrently held that the plaintiff is not entitled for the said relief for the reasons given in details on the basis of available evidence which is seen to be properly appreciated.

Under the circumstances, this Court is not inclined to interfere with the concurrent findings recorded by the Courts below holding that the plaintiff is not entitled for specific performance of the contract and, as such, the appeal stands dismissed with no order as to costs.

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